

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 TYLERRE C. PERRY,

12 Petitioner,

13 vs.

14
15 G. J. JANDA,

16 Respondent.
17

CASE NO. 12cv2512-LAB (JMA)

**ORDER DENYING MOTIONS FOR
DISCOVERY, TO EXPAND THE
RECORD, FOR AN EVIDENTIARY
HEARING, AND FOR
APPOINTMENT OF COUNSEL;
AND**

**ORDER REQUIRING NEW
REPORT AND
RECOMMENDATION**

18 After Petitioner Tylerre Perry filed his petition pursuant to 28 U.S.C. § 2254, this
19 matter was referred to Magistrate Judge Jan Adler for report and recommendation. On
20 October 3, 2013, Judge Adler issued his report and recommendation, recommending that
21 the writ be denied. After several extensions of time to file objections, Perry in late December
22 filed five motions, seeking discovery, an expansion of the record, an evidentiary hearing,
23 appointment of counsel, and “reconsideration.” The motion for reconsideration is in fact a
24 motion for leave to amend the petition.

25 The first four motions all pertain to evidence Perry would like to obtain, which he
26 thinks would cast doubt on his conviction. The Court’s review, however, is limited to the
27 record before the state court. *Cullen v . Pinholster*, 131 S.Ct. 1388, 1399 (2011).
28 Furthermore, the evidence Perry’s discovery motion describes could have been discovered

1 with reasonable diligence no later than 2006, when Perry was tried and convicted.
2 Furthermore, the motion makes clear Perry does not know what the discovery might
3 uncover, or how it might be helpful to him. And even if Perry obtained the evidence now, it
4 could not serve as a basis for habeas relief merely because it might cast doubt on some of
5 the evidence presented at trial, as he argues. Because Perry is not entitled to discovery, he
6 is also not entitled to a hearing at which he can present whatever evidence he might
7 discover, nor admission of any such evidence into the record. Nor is he entitled to appointed
8 counsel to assist him with discovery and the hearing. The first four motions (Docket nos. 16,
9 17, 18, and 19) are therefore **DENIED**.

10 Perry also seeks to amend his petition, because he says he initially did a poor job of
11 researching and presenting his arguments. He has attached a proposed amended petition
12 to his motion. Under 28 U.S.C. § 636(c), after a magistrate judge issues a report and
13 recommendation, a district judge is empowered to recommit the matter to the magistrate
14 judge with instructions. In order to give Perry a full opportunity to develop his arguments, the
15 Court will exercise this option.

16 In view of Perry's proposal to amend the petition, the current report and
17 recommendation (Docket no. 9) is insufficient and the matter is recommitted to Judge Adler
18 for a new report and recommendation, addressing whether Perry would be entitled to relief
19 under either the original petition or his proposed amended petition. In discussing the original
20 petition, Judge Adler may rely on analysis from his original report and recommendation, or
21 alter it as he sees fit. If Judge Adler determines the proposed amendments would be futile,
22 the new report and recommendation should explain why. The new report and
23 recommendation should include a recommendation as to whether leave to amend should
24 be granted.

25 ///

26 ///

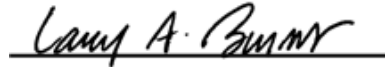
27 ///

28 ///

1 Perry's objections to the original report and recommendation are **OVERRULED AS**
2 **MOOT.**

3 **IT IS SO ORDERED.**

4 DATED: January 8, 2014

5 

6 **HONORABLE LARRY ALAN BURNS**
7 United States District Judge
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28